

Virginia Regulatory Town Hall

Exempt Action Final Regulation Agency Background Document

Agency Name:	State Air Pollution Control Board
Regulation Title:	Regulations for the Control and Abatement of Air Pollution
Primary Action:	9 VAC 5 Chapter 60, Article 2 (9 VAC 5-60-90 et seq.)
Secondary Action(s):	9 VAC 5 Chapter 50, Article 5 (9 VAC 5-50-400 et seq.) and 9 VAC 5 Chapter 60, Article 1 (9 VAC 5-60-60 et seq.)
Action Title:	Federal Documents Incorporated by Reference (Rev. I04)
Date:	November 4, 2004

Where an agency or regulation is exempt in part or in whole from the requirements of the Administrative Process Act (§ 2.2-4000 *et seq.* of the *Code of Virginia*) (APA), the agency may provide information pertaining to the action to be included on the Regulatory Town Hall. The agency must still comply the requirements of the Virginia Register Act (§ 2.2-4100 *et seq.* of the *Code of Virginia*) and file with the Registrar and publish their regulations in a style and format conforming with the *Virginia Register Form, Style and Procedure Manual*. The agency must also comply with Executive Order Fifty-Eight (99) which requires an assessment of the regulation's impact on the institution of the family and family stability.

This agency background document may be used for actions exempt pursuant to § 2.2-4006 A 1 through 4 at the final stage. Note that agency actions exempt pursuant to § 2.2-4006 A 1 through 4 of the APA do not require filing with the Registrar at the proposed stage.

Summary

Please provide a brief summary of the regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment.

The regulation amendments update state regulations that incorporate by reference certain federal regulations to reflect the Code of Federal Regulations as published on July 1, 2004. Below is a list of the new standards in the federal regulations that are being incorporated into the regulations by reference.

1. 40 CFR Part 60 - Standards of performance for new stationary sources - No new NSPS are being incorporated; however, the date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version.

2. 40 CFR Part 61 - National emissions standards for hazardous air pollutants - No new NESHAP are being incorporated; however, the date of the Code of Federal Regulations book being incorporated by reference is being updated to the latest version.

3. 40 CFR Part 63 - National emissions standards for hazardous air pollutants for source categories (new standards in new edition are listed below).

- a. Subpart GGGGG - Site Remediation (40 CFR 63.7880 through 63.7957).
- b. Subpart TTTTTT - Primary Magnesium Refining (40 CFR 63.9880 through 63.9942).
- c. Subpart RRRRR - Taconite Iron Ore Processing (40 CFR 63.9580 through 63.9652).
- d. Subpart FFFF - Miscellaneous Organic Chemical Manufacturing (40 CFR 63.2430 through 63.2550).
- e. Subpart KKKK - Surface Coating of Metal Cans (40 CFR 63.3480 through 63.3561).
- f. Subpart HHHHH - Miscellaneous Coating Manufacturing (40 CFR 63.7980 through 63.8105).
- g. Subpart IIII - Mercury Cell Chlor-Alkali Plants (40 CFR 63.8180 through 63.8266).
- h. Subpart MMMM - Surface Coating of Miscellaneous Metal Parts and Products (40 CFR 63.3880 through 63.3981).
- i. Subpart AAAAA - Lime Manufacturing Plants (40 CFR 63.7080 through 63.7143).
- j. Subpart EEEE - Organic Liquids Distribution (Non-gasoline) (40 CFR 63.2330 through 63.2406).
- k. Subpart YYYY - Stationary Combustion Turbines (40 CFR 63.6080 through 63.6175).
- l. Subpart PPPP - Surface Coating of Plastic Parts and Products (40 CFR 63.4480 through 63.4581).
- m. Subpart EEEEE - Iron and Steel Foundries (40 CFR 63.7680 through 63.7765).
- n. Subpart IIII - Surface Coating of Automobiles and Light-Duty Trucks (40 CFR 63.3080 through 63.3176).
- o. Subpart ZZZZ - Stationary Reciprocating Internal Combustion Engines (40 CFR 63.6580 through 63.6675).
- p. Subpart XX - Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste (40 CFR 63.1080 through 63.0198).
- q. Subpart AAAA - Municipal Solid Waste Landfills (40 CFR 63.1930 through 63.1990).

In addition, 9 VAC 5-60-91 has been repealed in order to locate the provisions of 40 CFR 63.16 (National Performance Track) with the other general provisions of Subpart A.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency, including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On November 3, 2004, the State Air Pollution Control Board adopted final amendments to regulations entitled "Regulations for the Control and Abatement of Air Pollution," specifically federal regulations incorporated by reference (9 VAC 5 Chapter 50, Article 5 and 9 VAC 5 Chapter 60, Articles 1 and 2). The regulation amendments are to be effective on January 1, 2005.

The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 c of the Administrative Process Act because they are necessary to meet the requirements of the federal Clean Air Act and do not differ materially from the pertinent U.S. Environmental Protection Agency (EPA) regulations.

In adopting these amendments, the board affirmed that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.

Additional Information

Please indicate that the text of the regulation, the reporting forms the agency intends to incorporate or use in administering the proposed regulation, a copy of any documents to be incorporated by reference are attached.

Please state that the Office of the Attorney General (OAG) has certified that the agency has the statutory authority to promulgate the regulation and that it comports with applicable state and/or federal law.

If the exemption claimed falls under § 2.2-4006 A 4 c of the APA please include the federal law or regulations being relied upon for the final agency action.

The text of the regulation, along with the documents to be incorporated by reference, is attached and a copy of the federal regulations being relied upon for the final agency action is available upon request.

Section 10.1-1308 of the Virginia Air Pollution Control Law (Title 10.1, Chapter 13 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling and prohibiting air pollution in order to protect public health and welfare. Letters providing written assurance from the Office of the Attorney General that (i) the board has statutory authority to promulgate the final regulation amendments and (ii) the amendments qualify as an exemption under § 2.2-4006 A 4 c of the Administrative Process Act are available upon request.

Family Impact Statement

Please provide an analysis of the impact of the regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; 4) increase or decrease disposable family income.

It is not anticipated that these regulation amendments will have a direct impact on families. However, there will be positive indirect impacts in that the regulation amendments will ensure that the Commonwealth's air pollution control regulations will function as effectively as possible, thus contributing to reductions in related health and welfare problems.

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